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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Reply Comments of Williams Communications, Inc.
In the Matter of Petition for Declaratory Ruling to Declare Unlawful Certain RFP Practices of Ameritech
CC Docket No. 98-62

Enclosed for filing are an original and twelve (12) copies of Reply Comments submitted by Williams Communications, Inc. ("Williams"), in the above-referenced matter. Also enclosed is a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows software and labeled as directed. As requested, Williams' Reply Comments have been saved to the diskette as a "read only" document.

In addition, included are two (2) additional copies of Williams' Reply Comments to be file-stamped and returned in the enclosed self-addressed, postage-paid envelope.

If there are any questions concerning the above matter, please communicate directly with the undersigned.

Sincerely yours,

Mickey S. Moon
Director of Regulatory Affairs
(918) 573-8771

MSM:psn
Enclosures

xc: Will Gault (w/enclosure)
All Parties to the Proceeding (w/enclosure)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling to	)	CC Docket No. 98-62
Declare Unlawful Certain RFP	)	
Practices by Ameritech	)	

REPLY COMMENTS OF WILLIAMS COMMUNICATIONS, INC.

Pursuant to the Commission's May 5, 1998, Public Notice setting forth the pleading cycle for comments on Sprint Communications Company, L.P.'s ("Sprint") petition for a declaratory ruling (DA 98-849), Williams Communications, Inc. ("WCI"), respectfully submits its reply comments to the comments filed by interested parties on June 4, 1998.

INTRODUCTION

On June 4, 1998, the U.S. District Court for the Western District of Washington referred to this Commission, under the doctrine of primary jurisdiction, the same legal issues (concerning U S WEST) that were addressed by the comments filed in this docket on June 4, 1998.[1] AT&T Corp. v. U S WEST Communications, Inc., No. C98-634 (W.D. Wash. June 4, 1998). On June 9, 1998, the U.S. District Court for the Northern

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[1]Those issues concern the legality, under 47 U.S.C. §§ 251(g) and 271, of "teaming" arrangements between a Bell Operating Company ("BOC") and an unaffiliated interexchange carrier ("IXC"), wherein the BOC engages in the marketing of the IXC's interLATA services to its in-region customers.

District of Illinois also referred the same legal issues (concerning Ameritech) to the Commission. AT&T Corp. v. Ameritech Corp., No. 98 C 2993 (N.D. Ill. June 9, 1998). On June 11, 1998, the Commission released a Public Notice (DA 98-1109) establishing the procedure to address the referrals from the respective district courts, directing the plaintiffs in those district court actions to initiate a complaint proceeding pursuant to 47 U.S.C. § 208.

The issues before the Commission in this docket, as evidenced by the comments filed on June 4, 1998, are now commingled with the issues referred to it by the district courts. WCI's reply comments, therefore, address the legal and public policy issues that are presented in the comments filed in this docket and that will be presented in the forthcoming section 208 proceedings[2] in the generic factual context of a BOC marketing the interLATA services of an unaffiliated IXC.

Compliance with the Requirements of Section 271 Is Not a Prerequisite to a BOC's Ability to Act as a Marketing Agent for InterLATA Services Furnished by an IXC

Section 271(a) states that a BOC may not "provide interLATA services" (i.e., the transmission of information, 47 U.S.C. § 153(43), "between a point located in a local access and transport area and a point located outside such area," id. § 153(21)) prior to receiving 271 authority. 47 U.S.C. § 271(a). For purposes of the competitive checklist

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[2]Because the Commission "do[es] not contemplate that . . . additional briefs will be permitted in these referral proceedings . . . with respect to the merits of the complaints," Public Notice (DA 98-1109) (rel. June 11, 1998), WCI assumes that the Commission will address the issues as framed in the complaints filed in the district courts. *See id.* ("Plaintiffs shall include as attachments to the complaints the complete record filed in the related court proceedings").

requirements of Section 271(c)(2)(B), the Commission defines the word "provide" to be synonymous with "furnish and make available." Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, ¶ 110, CC Docket 97-137 (rel. Aug. 19, 1997). Under the Commission's interpretation, a BOC is not considered to "provide" a checklist item unless it either "actually furnishes the item," or is under a "concrete and specific legal obligation to furnish the item upon request." Id.

Insofar as the Commission attaches the same meaning to the word "provide" in Section 271(a) as it has in Section 271(c), the Section 271(a) prohibition against the provision of interLATA services does not apply to the teaming arrangements in dispute. Certainly, no BOC at present has a legal obligation to furnish interLATA services, nor under a teaming arrangement does the BOC actually furnish the interLATA transmission.

MFJ

Ignoring Section 601 of the Act, the legal grounds asserted in the initial comments filed in this docket supporting Sprint's petition on this issue, and in the complaints filed by AT&T *et al.* ("Plaintiffs") in the district courts of Washington and Illinois ("Complaints"), rest upon the AT&T Consent Decree ("Decree") contained in the Modified Final Judgement ("MFJ"), United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub. nom, Maryland v. United States, 460 U.S. 1003 (1983), and Judge Greene's decisions thereunder.

It is asserted that a BOC's marketing of an IXC's interLATA services was banned under the MFJ. Plaintiffs base this assertion on statements in Judge Greene's opinions

taken out of the context in which they were made. Section II(D)(1) of the Decree prohibited BOCs from "provid[ing] interexchange [defined as interLATA] telecommunications services." Judge Greene made it clear that the term "providing" was "synonymous with furnishing, marketing or selling." United States v. Western Elec. Co., 675 F. Supp. 655, 666 (D.D.C. 1987). What is not made clear in the comments or Complaints is that the MFJ court proclaimed this marketing prohibition only in the context of a BOC ***reselling*** the interLATA services it purchased at wholesale. United States v. Western Elec. Co., 627 F. Supp. 1090, 1100-01 (D.D.C. 1986) (finding that the "purchase of interexchange capacity on a wholesale basis . . . and its sale at retail clearly constitutes the provision of interexchange services under the decree").

Under the MFJ, as under Section 271 today, interLATA services included "both facilities-based [interLATA] services and the resale of the [interLATA] services of others." United States v. Western Elec. Co., 673 F. Supp. 525, 540 n.69 (D.D.C. 1987). It was only in those two "certain contexts," however, that Judge Greene included within the MFJ's prohibitions "related activities such as . . . the selection of interexchange carriers . . . and the marketing of the services of interexchange carriers." Id.

Public Interest Considerations

Under the teaming arrangement discussed in the Petition, comments and Complaints, the BOC does not purchase wholesale interLATA transmission capacity for resale to its in-region customers. The teamed-up IXC makes available and actually furnishes the interLATA service to the customer pursuant to the IXC's rates, terms, and conditions of service contained in its retail tariff. The price for interLATA service is

determined by the IXC's tariff, not by the BOC. This arrangement does not undermine the anticompetitive safeguards in the Telecommunications Act of 1996. Instead, such an arrangement furthers the Act's policy of promoting competition.

Prohibiting BOCs and unaffiliated IXCs from entering into such teaming arrangements inhibits competition in the interLATA market. In a market still dominated by three major interLATA service providers, these teaming arrangements constitute a significant market entry platform for facilities-based IXCs who otherwise do not have the name recognition and other competitive advantages, such as extensive retail marketing departments and experience, that the big three IXCs have. By teaming with a BOC, wherein the BOC, with its retail marketing ability, markets the IXC's interLATA services on behalf of the IXC in conjunction with the BOC's own intraLATA services, the IXC can effectively become a competitive option for consumers in the interLATA market.

The primary purpose of the BOC line of business restrictions in the MFJ was to prevent the BOCs from competing in markets where they could exploit their dominance of the local bottleneck facilities. Indeed, the *raison d'être* for the AT&T divestiture was the danger of cross-subsidization and the danger of preferential treatment. United States v. Western Elec. Co., 627 F. Supp. at 1094. In a teaming arrangement, where the entity providing the interLATA service is unaffiliated with the BOC, the danger of cross-subsidization by the BOC is nil. The danger of preferential treatment is greatly diminished when, as stated in the initial comments, the BOCs "offer to enter into the same `teaming arrangement' with all IXCs in order to avoid discrimination and ensure maintenance of equal access." TRA Comments 6. In United States v. Western Elec. Co., 714 F. Supp. 1

(D.D.C. 1988), Judge Greene allowed the BOCs to transmit information services generated by unaffiliated entities under reasoning that it is appropriate to allow BOCs to market interLATA services provided by an unaffiliated entity:

> In the absence of their [the BOCs'] participation in [transmission of interLATA services], these companies have little incentive for discrimination against competitors in the [interLATA] market.

Id. at 5-6.

The teaming arrangements do not turn the BOCs into competitors in the IXC market, for which the MFJ was designed to prevent; rather, in vying to team up with a BOC, IXCs compete against IXCs (as AT&T has expressed its interest in doing, notwithstanding its challenge to such arrangements) not against the BOCs. Nor should a BOC's participation in such an arrangement diminish its incentive to satisfy Section 271's market opening requirements in order to compete outright in the interLATA market.

Commenters opposing these teaming arrangements suggest that the BOCs "will no longer have the incentive that constituted the driving force behind efforts . . . to allow genuine competition in its local markets." e.spire Comments at 2. This statement is true only if one assumes that the BOCs' only driving force is to maintain their local exchange revenue levels, not to compete in the interLATA markets for opportunities to acquire interLATA revenues. While such teaming arrangements may indeed help the BOC retain its local revenue base -- and there is no requirement under the Act that a BOC must lose

local market share to satisfy Section 271[3] -- it does nothing to diminish the BOC's incentive to qualify for entry into the interLATA market, because under a teaming arrangement, the unaffiliated IXC, whose services the BOC is marketing, receives all of the profit derived from the actual provision of interLATA service.

Teaming Arrangements Do Not Violate Section 251(g)

A teaming arrangement will not affect a BOC's requirement to provide nondiscriminatory exchange access services to IXCs. So long as in marketing the teaming arrangement to its customers the BOC uses the Commission-approved safe-harbor marketing script, 13 FCC Rec. 539, ¶¶ 233-38, its equal access obligations should be met. See U S WEST Comments at 14-15. The only preferential treatment given by a BOC to an IXC is its preference to team up with the IXC able to offer the most competitive rates for interLATA services. Such preferential treatment is legitimate, pro-consumer, and not proscribed by Section 251(g).

CONCLUSION

Teaming arrangements whereby a BOC markets the interLATA services provided by an unaffiliated IXC in conjunction with its own intraLATA services do not (1) make a BOC the provider of interLATA services contrary to Section 271(a), (2) make the BOC a competitor in the interLATA market where it can use its market power in its local market

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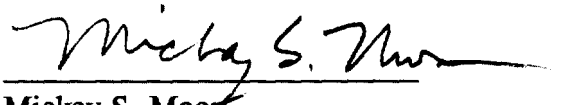
[3]The BOCs should be able to compete in their local markets on a level playing field with CLECs. There is no legal impediment to a facilities-based CLEC's (such as e.spire) ability to enter into identical teaming arrangements with an IXC. 47 U.S.C. § 271(e)(1). Section 271 does not require a BOC's ability to compete in the local market while attempting to comply with Section 271's requirements be hampered.

to unfairly extend its market dominance into the IXC market, (3) diminish the BOC's incentive to comply with Section 271(c)'s market opening requirements, or (4) violate the equal access and nondiscriminatory interconnection restrictions and obligations under Section 251(g). For the foregoing reasons, WCI respectfully urges the Commission to find that such teaming arrangements promote the Commission's goal of fostering competition and hold that they do not violate the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Respectfully submitted,



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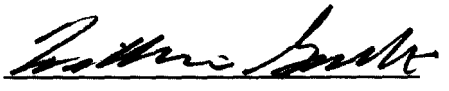

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CERTIFICATE OF SERVICE

I, Pamela S. Neff, do hereby certify that on this 19th day of June, 1998, copies of the foregoing **Reply Comments of Williams Communications, Inc. in CC Docket No. 98-62** regarding the Petition filed by Sprint Communications Company, L.P. seeking a Declaratory Ruling to declare unlawful certain RFP practices by Ameritech Corporation were served today by first class mail, postage prepaid, or by hand, as indicated to the parties listed below.

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